IN THE HIGH COURT OF JUDICATURE AT PATNA

CIVIL REVIEW No.79 of 2020

In

Civil Writ Jurisdiction Case No.559 of 2020

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M/s Gauri Shankar Indane Service, Kuchaikote, District - Gopalganj through its Proprietor Ravi Pandey, S/o Late Gauri Shankar Pandey, R/o Flat No. 201, Sindhu Nilay Apartment, Yaduvansh Path, Nageshwar Colony, P.S. - Buddha, Colony, District - Patna.

... ... Petitioner/s

Versus

1. Indian Oil Corporation Ltd. through the Executive Director (ED), Bihar State Office, Lok Nayak Jai Prakash Bhawan, 5th Floor, Dak Bungalow Chowk, Frazer Road, Patna-800001.
2. The General Manager I/c. (LPG), Bihar State Office, Lok Nayak Jai Prakash Bhawan, 5th Floor, Dak Bungalow Chowk, Frazer Road, Patna-800001.
3. The Dy. General Manager (LPG), Area Office, Patna under Bihar State Office, Indian Oil Corporation Ltd., Sahi Bhawan, Exhibition Road, Patna.
4. Mr. Udai Kumar, Son of not known, General Manager I/c. (LPG), Bihar State Office, Lok Nayak Jai Prakash Bhawan, 5th Floor, Dak Bungalow Chowk, Frazer Road, Patna-800001.
5. Mr. Arun Prasad, Son of Sri R.N. Prasad, the then Chief Area Manager, LPG, Patna Area Office, at present General Manager I/c., LPG, UPSO-1, Lucknow, resident of 402, Maa Sharde Complex, East Boring Canal Road, P.S. - Budha Colony, Patna.

... ... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Abhinav Srivastava, Adv.
Mr. Ranjan Kumar Srivastava, Adv.

For the Indian Oil Corporation : Mr. Anil Kumar Jha, Sr. Adv.
Mr. Sanat Kumar Mishra, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT
Date : 22-09-2021

Heard the counsel for the parties.

2. The petitioner, who is an erstwhile Gas Agency, being run under the name and style of M/s Gauri Shankar Indane Service, Kuchaikote in the district of Gopalganj, has sought a review of the judgment and order dated 22.05.2020 passed by this Court in C.W.J.C. No. 559 of 2020 on the ground that the complaint made by one Rajesh Pandey against the petitioner, which was the basis for terminating the agreement with the petitioner, was actually verified and was found to be false and the same was communicated to aforesaid Rajesh Pandey.

3. Similar complaint was made in the Prime Minister's Office and a communication had earlier been made by the respondent/Indian Oil Corporation Ltd. *(in short the Corporation)* that the accusation against the petitioner was incorrect.

4. The aforesaid facts and documents pertaining thereto were not in the possession of the petitioner and, therefore, those could not be brought to the notice of this Court when the matter was heard and finally disposed off on 22.05.2020.

5. To recapitulate the facts, the petitioner had approached this Court against the termination letter dated 30.12.2019 issued by the respondent/Corporation, whereby the distributorship of the petitioner had been ended with immediate effect.

6. While challenging the aforesaid letter/order, it was also prayed by the petitioner that an inquiry in the matter be directed to be conducted by a neutral body which would not be associated either with the respondent/Corporation or the Siwan Central Co-operative Bank.

7. The aforesaid prayer of the petitioner was never acceded to.

8. The sole question before the Court

was whether the decision of the respondent-Corporation terminating the agreement with the petitioner for running the Gas Agency was correct in view of there being doubt about the correctness of the allegation that the petitioner did not have sufficient liquid reserve in his bank account as mandated under the guidelines in that regard and that the petitioner did not have the requisite educational qualifications.

9. This Court had found that the information provided by the petitioner at the time of grant of contract regarding the amount of money parked in his bank account was incorrect. This had rendered the licence of the petitioner liable to be cancelled and the contract agreement to be rescinded as a consequence thereof.

10. What was argued before this Court was that pursuant to the advertisement issued in the year 2007, inviting applications for Retail Outlet Dealers with a premium to freedom fighters, the

father of the petitioner, *viz.*, Late Gauri Shankar Pandey, who had applied for the same, was selected. But, unfortunately, a day after the Letter of Intent (L.O.I.) was given to him, he died on 31.10.2008. The respondent-Corporation, after verifying the candidature of the petitioner and his being responsive to all the technical qualifications, had chosen the petitioner as a concessionaire. The liquid/cash reserve of the petitioner in the Co-operative Bank where he maintained an account was Rs. 20,40,000/-, which fact was verified in the "field investigation".

11. The licence was for a term of five years, but it was renewed for a further period of five years.

12. Aforesaid Rajesh Pandey, one of the employees of the petitioner, was later removed from service, who, in order to feed-fat his grudge, lodged a complaint with the I.O.C.L. that the licence was obtained by the petitioner by playing fraud with

the Company in projecting and over-exaggerated financial strength and his educational qualifications.

13. The complaint regarding the educational qualifications of the petitioner was not substantiated, but the other allegation was found to be correct. The petitioner was issued a show-cause notice and on his explanation not being found to be acceptable, the agreement with him was terminated.

14. During the course of arguments, many grounds were urged including that the entire purpose of asking for the information about the financial strength of a prospective bidder was only to ensure that in future, there be no dearth of infrastructure for the smooth running of the agency, but such issue did not remain relevant when the agency had already been run for a period of five years without any complaint and the contract was renewed for a further period of five years.

15. The facts which weighed with this Court regarding incorrect information of the financial

strength of the petitioner was that the Co-operative Bank had issued a certificate that the earlier certificate confirming the amount of Rs. 20,40,000/- in the bank account of the petitioner at the time of grant of first contract, was never issued by the Bank and that the records indicated that at the time of the grant of contract, the petitioner had a balance of Rs. 20,400/- only.

16. This Court found that since the petitioner could not demonstrate that he had Rs. 20,40,000/- in his bank account at the time when the contract was granted to him, the respondent/Corporation was perfectly justified in terminating such contract. However, while dismissing the writ petition, this Court had observed that in case no fresh contract for such dealership had been entered into by the respondent/Corporation with any third party, it would be open for the petitioner to approach the concerned authority again and seek a renewal of the contract on sympathetical

considerations, keeping in mind that he had carried on the obligation of a licensee with due diligence for about a decade and, therefore, he ought not to be thrown out of the distributorship *lock stock and barrel*.

17. This Court has been informed that pursuant to the aforesaid concession given by this Court referred to above, the petitioner made a representation before the respondent/Corporation but *vide* order dated 03.06.2020, passed by the General Manager I/C (LPG), Bihar State Office, Indian Oil Corporation Ltd., such a request was turned down.

18. Against the aforesaid order passed by the respondent/Corporation, the petitioner had preferred a writ *vide* C.W.J.C. No. 7295 of 2020, which too was dismissed by order dated 15.01.2021.

19. The reason for preferring the present review petition is that aforesaid Rajesh Pandey, on whose complaint the contract of the petitioner was terminated, had also lodged a

complaint before the Prime Minster's Office with almost same allegation, but the same was not found to be correct and necessary communication was made by the respondent/Corporation to the complainant as also to the Prime Minister's Office.

20. The aforesaid facts and the related documents were not in the possession of the petitioner and, therefore, the same could not be brought to the notice of this Court. Additionally, it has been argued that the respondent/Corporation was aware about this development and it was therefore under an obligation to bring this fact to the knowledge of the Court when the matter was being heard. Based on this fact, it has been urged that holding back such an important communication by the respondent/Corporation demonstrates that its action in terminating the contract of the petitioner was invested with *mala fides* and that the respondent/Corporation has not come clean before this Court. If the aforesaid fact and the related

documents would have been placed before this Court, there could be a possibility of this Court having decided the matter otherwise.

21. It has also been brought to the notice of this Court by way of supplementary affidavit that the petitioner has also made a complaint/representation through *e-mail* to the India Head of the Indian Oil Corporation Ltd. regarding the conspiratorial approach of the local officers/functionaries of the respondent/Corporation in ousting the petitioner from the business. On such complaint, an information was sought from Siwan Central Co-operative Bank on 23.03.2021 regarding the feasibility of the production of original ledger/records of the petitioner's saving account, bearing No.-14111. The Siwan Central Co-operative Bank is said to have intimated the concerned authority of the I.O.C.L. that the ledger/records relating to the savings account of the petitioner is not available in the Bank records.

22. In response to the aforesaid contention by the review-petitioner, the learned Advocate for the respondent/Corporation has submitted that no document has been brought on record by the petitioner, even in this review petition, to establish that he had Rs. 20,40,000/- in his bank account with the Siwan Central Co-operative Bank on the relevant date and, therefore, this review petition ought not to be entertained.

23. After hearing the learned counsel for the parties, it appears that the only ground raised in this review petition is that this Court was not provided with the information of the complainant/Rajesh Pandey having made a complaint in similar terms in the Prime Minister's Office also and the respondent/Corporation had not found such complaint to be worthwhile for proceeding against the petitioner, which fact was communicated to the Prime Minister's Office as also to the complainant.

24. Annexure-5 to this review petition

is a letter addressed to Mr. Rajesh Pandey by the Deputy General Manager (LPG-S) of Indian Oil Corporation Ltd., dated 09.02.2018, stating that the complaint/allegations made by him against the petitioner with respect to his educational qualifications and bank accounts have not been substantiated.

25. Assuming for the time being that this fact, namely, Rajesh Pandey making a similar complaint before the Prime Minister's Office and the communication to him by the I.O.C.L, dated 09.02.2018, would have been brought to the notice of this Court, there would have been no change in the decision. The reason for saying so is that the communication does not indicate the process by which the accusation made by aforesaid Rajesh Pandey was found to be false and unsubstantiated. What communication was made from the Office of the Prime Minister to the respondent/Corporation and what was the reply of the respondent/Corporation, in

case any communication was made in that regard from the Prime Minister's Office, may not be of relevance when a complaint against the petitioner was investigated and was found to be true so far as the liquid/cash reserve of the petitioner at the time of grant of contract is concerned.

26. A review of a judgment and order is permissible but only on a glaring omission or patent mistake or grave error creeping in such judgment and order. I am mindful of the basic principle of review that it is not a matter of re-hearing on merits and that such power of review is to be exercised only to prevent miscarriage of justice or correct the grave and palpable error.

27. Even though the petitioner has been able to discover a new evidence which was not available to it despite exercise of due diligence but that alone would not be sufficient as even if that document would have been taken into account, the order would have had the same.

[Refer to:- (i) *Moran Mar Basselios Chatholicos and another Appellants v. Most Rev. Mar Poulose Athanasius and others Repondents : AIR 1954 SC 526*; (ii) *M/s. Northern India Caterers (India) Ltd. Appellant v. Lt. Governor of Delhi Respondent : AIR 1980 SC 674*; (iii) *Lily Thomas, etc., Appellants v. Union of India and others Respondents : 2000 CRI. L.J. 2433*; (iv) *Board of Control from Cricket, India and another Appellants v. Netaji Cricket Club and others Respondents : AIR 2005 SC 592* and (v) *The High Court of Judicature at Patna through the Registrar General Vs. Sri K.K. Chaubey and other analogous cases : (2015) 4 PLJR 328*].

28. Thus, the judgment and order dated 22.05.2020, which is sought to be reviewed, does not perpetuate any miscarriage of justice or abuse of the process of law.

29. A re-hearing and a fresh decision in a case is not the mandate or scope of the power of review. The normal and basic principle of rule of law is that a judgment pronounced by a Court is final and departure from that principle is justified only when circumstances of a substantial and compelling

character make it necessary to do so. Even at the risk of reiteration and prolixity, this Court finds that even in the absence of the new material/evidence placed before this Court, no error has crept in the judgment and order requiring its rectification in review.

30. The review petition is, accordingly, dismissed.

(Ashutosh Kumar, J)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	22/09/2021
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